

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorization for Response to Business Damage Claim (for Litigation) - Anthologia, Inc.

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

A business damage claim has been filed by Anthologia, Inc. d/b/a Garth A. Schweizer Landscape Architect, relating to Parcel Numbers 128/728A/728B/728C on the County Road 15 project. Anthologia operates a business on the site and has claimed \$950,350.00 in damages to compensate the business for reduction in income stream and a \$500,000.00 estimate for the cost to reestablish the business to avoid a total loss, or a total of \$1,450,350.00, exclusive of statutory interest, attorney's fees and cost reimbursements. Request authorization to make a counteroffer of \$313,397.14, based on the recommendation of County's experts. Judge Simmons.

District 5 Brenda Carey

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends the Board gives authorization to make a counteroffer of \$313,397.14, based on the recommendation of County's experts.

ATTACHMENTS:

1. Anthologia, Inc.

Additionally Reviewed By: No additional reviews



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney *MM*

From: Al Schwarz, Assistant County Attorney *AS*
Ext. 5736

Concur: Pam Hastings, Administrative Manager/Public Works Department
David V. Nichols, P.E., Principal Engineer/Engineering Division *DVN* 12-4-07

Date: December 4, 2007

Subject: Authorization to Respond to Business Damage Claim
County Road 15
Parcel Nos. 128/728A/728B/728C
Property owner: Garth A. Schweizer individually and as member manager of
Monroe Road, LLC
Business Tenant: Anthologia, Inc. d/b/a Garth A. Schweizer, Landscape
Architect
Seminole County v. O'Dell
Case No. 2007-CA-1455-13-L

This Memorandum requests authorization by the Board of County Commissioners ("BCC") to respond to the business damage claim of Anthologia, Inc. d/b/a Garth A. Schweizer, Landscape Architect ("Anthologia") on County Road 15. Anthologia is the business located on Parcel Nos. 128/728A/728B/728C. It is a commercial landscape architecture business. By statute, the County is required to accept or reject the claim or submit a counteroffer within 120 days after receipt of the claim. Anthologia made its business damage claim of \$950,350.00 and \$500,000.00, or a total of \$1,450,350.00 exclusive of statutory interest, attorney's fees and costs reimbursement on June 18, 2007 (See part IIIA., below). By stipulation, the Anthologia's attorney agreed to extend the statutory deadline for the County's response from October 14, 2007 to December 15, 2007.

Upon receipt of the business damage claim, the County had to go out and contractually retain experts, including a certified public accountant in addition to an appraiser. The County then turned the claim over to the experts for review and analysis. The expert requested written discovery be prepared and served on Anthologia which was submitted by the County on July 2, 2007. After reviewing this response, the

accounting expert requested the County have an engineer submit a sketch and cost estimate in an attempt to cure any business damage caused by the taking. The accounting expert requested further information and an additional request to produce was submitted to Anthologia on November 2, 2007. The engineer submitted a finalized sketch and cost estimates on November 15, 2007 for the appraiser to review. The County's review appraiser reviewed those costs and attempted to contact the appraiser who was hospitalized and had emergency surgery. Final discussion with the appraiser occurred on November 30, 2007. This request is a result of that discussion.

I PROPERTY

A. Location Data for Parcel Nos. 128/728A/728B/728C

The subject parcels are located along the northwest corner of County Road 15 (Monroe Road) and Church Street in a portion of unincorporated Seminole County, Florida. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Addresses

The street address for Parcel Nos. 128/728A/728B/728C is 728 Monroe Road, Sanford, Florida.

C. Description

Parcel Nos. 128/728A/728B/728C. The parent tract consists of 2.633 acres and is improved with a residence that has been converted to an office. The area to be acquired as Parcel No. 128 is .976 acres leaving a remainder of 1.687 acres. There will also be three temporary construction easements, Parcel Nos. 728A, 728B, and 728C in the amount of 75, 1,960, and 75 square feet respectively.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 128/728A/728B/728C. The resolution found that County Road 15 is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on August 2, 2007, with title to Parcel No. 128 and the right to use Parcel Nos. 728A, 728B, 728C vesting in Seminole County on August 14, 2007, the date of the good faith deposit.

III BUSINESS DAMAGES

At the time of the taking, Anthologia, Inc.'s, business had been in operation since at least on or before January 1, 2001. The facility has operated continuously and uninterrupted in excess of five (5) years at the subject property. Therefore, the business meets the statutory time requirements for business damages.

A. Anthologia's Business Damage Report

Anthologia's attorney hired an expert to prepare the business damage report and opined \$950,350.00 in damages to compensate the business for reduction in income stream and a \$500,000.00 estimate for the cost to reestablish the business to avoid a total loss, or a total of \$1,450,350.00.

Anthologia's theory is that the taking for Parcel Nos. 128 and 728A/728B/728C will require the demolition of the business improvements within the area of taking. Anthologia further claims that the demolition of these business improvements will result in a loss of business in the amount of \$950,350.00. Anthologia further asserts that in order to avoid a total wipe out of the business, an estimated amount of \$450,000.00 will need to be spent to reestablish the improvements on-site and to make it whole.

B. County's Engineering Analysis and Business Damage Report

The County has retained a certified public accountant and an engineer in addition to its appraiser as its experts on the business damage claim. The engineer has found that it will cost \$228,940.14 to reestablish the building on its current site in addition to \$6,875.00 in minor miscellaneous moving costs. Moreover, the County's appraiser has submitted a cost estimate of \$77,582.00 for plants within the area of taking. The total cost estimate amounts to \$313,397.14. The expert's written report is not complete because of the short time upon receiving all of the information the expert needs and the December 11, 2007 BCC meeting. However, based on the cost estimate and sketch prepared by the engineer, the expert has orally advised the County that a counteroffer of \$313,397.14 would be reasonable to compensate Anthologia in this case.

IV ANALYSIS

As a result of the engineering and business damage work performed to date, it appears as though a counteroffer made by the County in the amount of \$313,397.14 would compensate Anthologia for the cost of moving the business to another location on the same site in addition to a minor loss of business/inventory. Anthologia's business damage loss claim of \$950,350.00, without any further support, appears to be of highly questionable merit.

V ATTORNEY FEES

Attorney fees for business damage claims are based on the difference between the final judgment or settlement on the claim and the amount of the County's initial counteroffer. If there is no timely counteroffer within 120 days of the offer (or the time otherwise agreed between the parties), the counteroffer is deemed to be zero dollars. The same percentage attorney fee schedule is applied to this difference as is applied to the monetary benefits obtained as to land, improvements and damages. Therefore, it is important for experts to review the claim and any and all supporting documents and recommend an appropriate response so as to minimize any claim for attorney fees as discussed at the beginning of this memorandum; this statute provides a very short time period to perform a thorough review of the claim, including investigation and discovery.

VI RATIONALE AND COST CONTROL

This case is in the early stages. However, the Florida Statutes force the County to respond to the business damage claim quickly or risk significant additional exposure for attorney fees. This memorandum is intended only to address the statutory requirement for responding to the business damage claim and protect the County on the matter of attorney fees.

VII RECOMMENDATION

For the reasons discussed above, County staff recommends that the BCC authorize the County Attorney's Office to submit a counteroffer to settle business damages in the amount of \$313,397.14. This request pertains only to business damages. The matters of statutory interest, statutory attorney's fees, cost reimbursements and any other compensation or damage which might be due Anthologia will be addressed separately at a later date.

AHS/dre

Attachments

Exhibit A – Location map

Exhibit B – Parcel Sketch

P:\Users\Dedge\My Documents\Mem\Agenda Item Cr 15 Schweizer Business Damage Response2.Doc

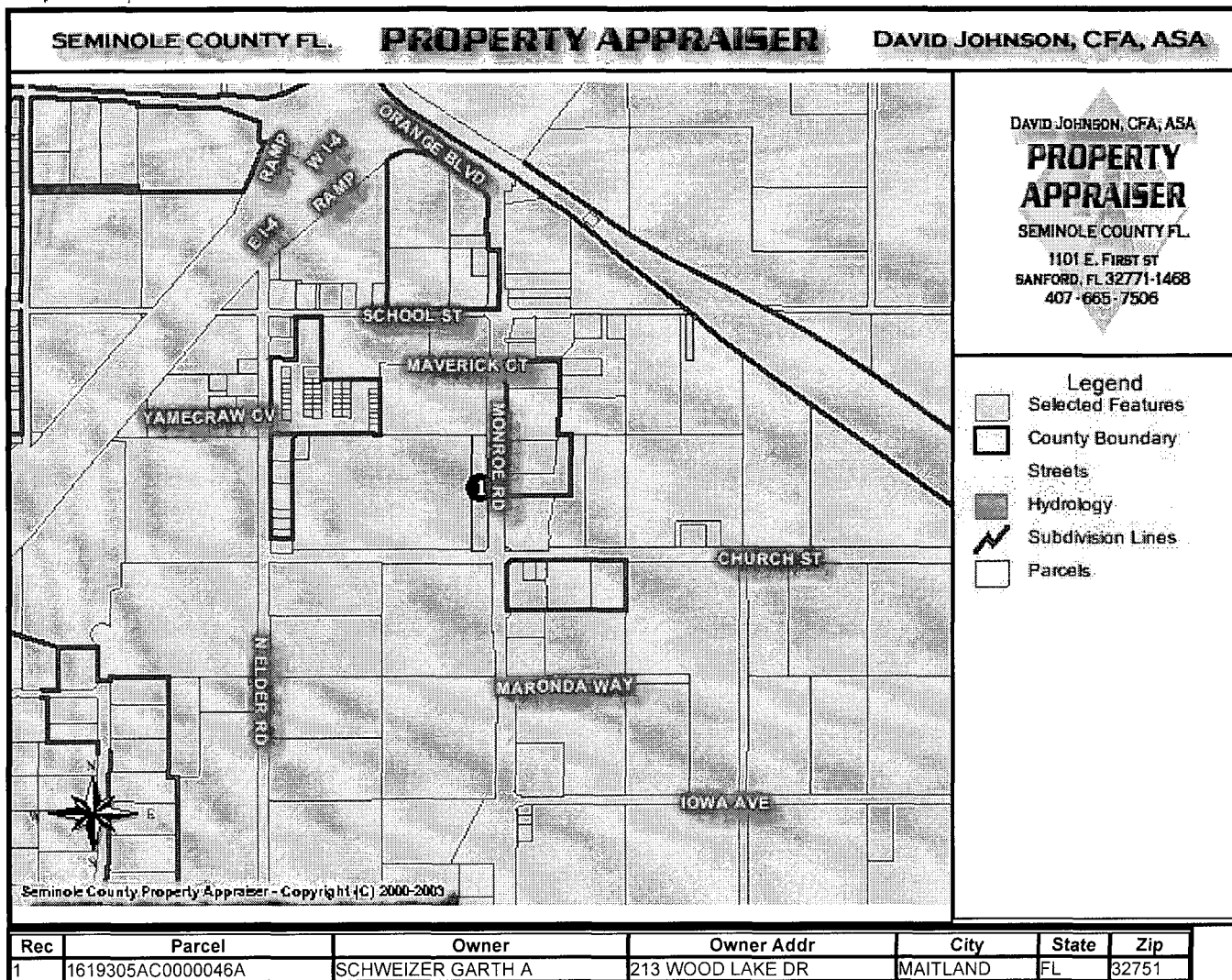


EXHIBIT A



PARENT TRACT	2.663 AC
AREA OF TAKE	0.976 AC
REMAINDER TRACT	1.687 AC
PROPERTY LINE	-----

AREA OF TAKE AND TCE	
PARCEL 128	(42,515 SF) 0.976 AC
PARCEL 728A	(75 SF) 0.002 AC
PARCEL 728B	(1,960 SF) 0.045 AC
PARCEL 728C	(75 SF) 0.002 AC

SCALE AS SHOWN

DRAWN: PHP APPROVED: JMS
 CHECKED: DCD APP.DATE: 9/01/06

EXHIBIT B

PARENT TRACT : WITH TAKING SHOWN

PARCEL 128/728 A-B-C
C.R. 15 / MONROE ROAD
SEMINOLE CO., FLORIDA



gai consultants
EB 9915
618 East South Street
Orlando, Florida 32801
407-423-8398

SHEET 2
PROJECT NUMBER
A060352.00
FILE NAME: PO128-72848C.dwg